



## TAX Alert

# Thailand Enacts Emergency Decree on Top-Up Tax from 1 January 2025

### Top-up Tax Emergency Decree B.E. 2024

On 26 December 2024, Thailand's government officially enacted the Emergency Decree on Top-Up Tax, published in the Royal Gazette. This decree aligns with the OECD's Pillar II Global Minimum Tax Framework, implementing a 15% global minimum tax for multinational enterprises (MNEs). The rules take effect from 1 January 2025.

### In-scope MNEs

The Top-up Tax Emergency Decree applies to MNEs with consolidated group revenues of at least €750 million in at least two of the four preceding fiscal years.

### Jurisdictional ETR

The Effective Tax Rate (ETR) is calculated for all Constituent Entities (CEs) in each jurisdiction except in case specific conditions and requirements are met. If the ETR falls below the 15% global minimum threshold, a "Top-Up Tax" will be applied to align the jurisdiction's tax liability with the required minimum level.

### Top-Up Tax Charging Mechanisms

The Top-up Tax Emergency Decree establishes three primary charging mechanisms in accordance with the OECD Model Rules as follows:

**The Qualified Domestic Minimum Top-Up Tax (QDMTT)** requires all CEs in Thailand to pay a top-up tax if the country's Effective Tax Rate (ETR) is below the 15% minimum threshold.

**The Income Inclusion Rule (IIR)** requires a Thai Ultimate Parent Entity (UPE), Intermediate Parent Entity, or Partially Owned Parent Entity, as applicable, to pay a top-up tax if it directly or indirectly owns entities in one or more foreign jurisdictions identified as low-tax jurisdictions, where the ETR is below 15%.

**The Undertaxed Payment Rule (UTPR)** requires all CEs in Thailand to pay the allocated top-up tax if the top-up tax obligation in low-tax foreign jurisdictions

has not been fully paid, either through the QDMTT or the IIR applicable in those jurisdictions.

For QDMTT and UTPR, top-up tax liabilities will be proportionally allocated among all Thai CEs based on their GloBE Income. Subject to specific conditions, the Thai CEs may agree in writing to designate specific Thai CE to assume responsibility for and pay the top-up tax to the Revenue Department. However, all Thai CEs will remain jointly liable for any unpaid top-up taxes.

For IIR, the Thai UPE, Intermediate Parent Entity, or Partially Owned Parent Entity in Thailand will be responsible for paying the top-up tax.

### Compliance obligation

The Top-up Tax Emergency Decree specifies three local filing requirements unless certain exemptions are met.

**Notification** of in-scope entities: an exemption applies if all CEs designate a single Thai CE to notify the Revenue Department on their behalf. This notification shall include detail of the UPE and identify the CE responsible for submitting the GloBE Information Return.

**GloBE Information Return (GIR):** Thai CEs are exempt from filing the GIR return with the Revenue Department if the return has already been submitted by the UPE or a designated filing entity in a jurisdiction that, for the reporting fiscal year, has an effective qualifying competent authority agreement with Thailand.

**Top-up Tax Return** and Top-up Tax Payments (if applicable).

### Filing due date

All three local filings must be submitted to the Revenue Department within 15 months after the end of the UPE's fiscal year. For the first fiscal year, a three-month extension applies, extending the deadline to 18 months. Consequently, for in-scope MNE groups with a fiscal year ending on 31 December 2025, the first filings will be due by 30 June 2027.

### Penalties and Surcharge

In cases of official assessment, incorrectly filed returns will be subject to a 100% penalty on the tax shortfall, while failure to file returns will be subject to a 200% penalty on the tax shortfall. However, the penalty may be waived or reduced based on the criteria set by the Director-General, subject to Cabinet approval.

Monthly Surcharge at 1.5% will be imposed on any unpaid top-up tax, capped at 100% of the tax shortfall. If the Director-General grants an extension for the payment of the top-up tax and the tax is paid within the extended period, the surcharge is reduced to 0.75% per month.

### Deloitte's observation

At this stage, the decree does not provide specific details regarding safe harbors, elections, specific rules for restructuring, or registration/notification procedures. It is anticipated that the Revenue Department will propose secondary legislation to provide additional details in line with the standards established by the OECD. Tax filings and payments will be facilitated through a fully electronic system.

Moving forward, the focus will centre on the Emergency Decree on Top-up Tax, B.E. 2567 (2024), early understanding of the impact and preparation will be key to an effective and efficient implementation. These are our recommendations:

- Perform an impact assessment on a group-wide perspective and identify risk areas.
- Identify entities within the group that would be obliged to pay the top-up tax (whether to the Thai or foreign tax authorities) and determine the impact on cash-flows and functions.
- Assess the impact on dividend distribution to shareholders.
- Understand how local authorities in different jurisdictions may respond (e.g. whether the group operates will introduce their own QDMTT or revamp their tax incentive regimes) and analyse the different scenarios.
- Determine if the present accounting system of the Group would be able to generate the data required for the purposes of GMT.
- Be prepared to submit all filings as this is required regardless of whether there is a top-up tax or not.
- While the first filing is only due 18 months after the financial year end 2025, there is a critical need to understand the full impact of GMT.

Pillar II represents a significant transformation in Thailand's taxation landscape, urging businesses to act swiftly in addressing the challenges and seizing the opportunities that arise, while being aware of their obligations within the new regulatory environment and strategically managing potential risks and opportunities.

## Contacts

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Thailand Tax & Legal team](#).

### Michael Fiore

Tax & Legal Leader

Tel: +66 2034 0126

Email: [mfiore@deloitte.com](mailto:mfiore@deloitte.com)

### Tan Hooi Beng

Southeast Asia International Tax Leader

Tel: +60 3 7610 8843

Email: [hooitan@deloitte.com](mailto:hooitan@deloitte.com)

### Kong Ping Chua

International Tax Partner

Tel: +65 6800 2966

Email: [kchua@deloitte.com](mailto:kchua@deloitte.com)

### Wanna Suteerapornchai

Business Tax Partner (M&A)

Tel: +66 (0) 2034 0000 ext 40144

Email: [wsuteerapornchai@deloitte.com](mailto:wsuteerapornchai@deloitte.com)

### Vayuree Jirakittidul

Business Tax Partner (compliance)

Tel: +66 (0) 2034 0177

Email: [vjirakittidul@deloitte.com](mailto:vjirakittidul@deloitte.com)

### Niorn Yukolthong

Tax director

Tel: +66 2034 0000; ext. 12398

Email: [nyukolthong@deloitte.com](mailto:nyukolthong@deloitte.com)



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